

Administrative Council

ITV Conference Call

February 24, 2017

Present:

Chief Justice Gerald W. VandeWalle, Chair

Birch Burdick for Tracy Peters

Judge Todd Cresap for Judge Gary Lee

Judge Laurie Fontaine

Judge Donovan Foughty

Judge Gail Hagerty

Judge William Herauf

Judge John Irby

Justice Carol Ronning Kapsner

Judge Doug Mattson

Judge Jason McCarthy for Judge Jon Jensen

Judge Dan Narum

Judge Frank Racek

Judge Bruce Romanick

Judge Robin Schmidt

Staff:

Sally Holewa

Others Present:

Scott Johnson

Justice Lisa Fair McEvers

Rod Olson

Carolyn Probst

Donna Wunderlich

Don Wolf

Larry Zubke

Minutes:

Renee Barnaby

Chief Justice Gerald VandeWalle called the meeting to order at 10:00 a.m. and welcomed Judge Schmidt as the newly-elected presiding judge for the Northwest Judicial District.

Minutes

The December 9, 2016 minutes were approved as submitted.

Weighted Caseload and WAPC Studies

Don Wolf said the 2016 weighted caseload study shows the single year need for judicial officers is 64.77, which is a decrease of 2.25 compared to the 2015 weighted caseload.

In response to a question asking why most of the statewide decrease comes from traffic, Sally Holewa responded while it is uncertain, there was an article in the *Fargo Forum* a few months ago about the decrease in traffic citations being issued. The *Forum* interviewed a number of law enforcement agencies including State Patrol, Fargo Police Department, and the Grand Forks Police Department, and they said fewer citations were being written locally because there agency was diverting officers to the Dakota Access pipeline protest. Judge Mattson said that information is consistent with the number of continuances to traffic cases and other cases because the highway patrol officers are unavailable to testify because they are on duty in Morton County.

Mr. Wolf said the 2015-16 two-year average weighted caseload shows a judicial officer shortage in all of the districts. The South Central showed the largest shortage of 3.11 judicial officers, while the Southeast had the smallest shortage of 0.15. The Northeast Central showed the largest increase in judicial officer need of .90 as compared to the previous study. The judicial officer need increased in both the Northeast Central and the Northeast due to the elimination of a referee position in each district as of December 31, 2016. The South Central showed a need increase of .80 and the East Central showed an increase of .41. The Southeast, Southwest and Northwest judicial districts each had a reduction in judicial officer need.

With regard to the referee weighted caseload, the overall referee shortage is 3.57 as compared to 1.57 in the previous study. Mr. Wolf indicated the Northeast shows the greatest need of 1.49 referees. This study is a pull-out of the weighted caseload study so it also reflects two fewer referees.

Mr. Wolf stated the law clerk weighted caseload shows a 2015-16 shortage of 4.54. The study reflects one fewer law clerk in the East Central. There are two other law clerks that have been identified for reduction in the 2017-19 budget proposal. Those positions were not vacant as of December 31, 2016 so they are still in the study.

The single-year overall judicial officer shortage for 2016 is 8.77 judicial officers, with the South Central having the largest shortage 3.21. The 2015-16 2-year average weighted caseload shows an overall shortage of 9.90 judicial officers, with the South Central having the largest shortage of 3.11.

With regard to the state-employed clerk offices, the Weighted Workload Assessment Study shows a need of 129.51 clerks. The total FTEs authorized for 2015-17 is 111.50, which is a shortage of 18.01 clerks. The proposed changes included in the budget request will result in a net reduction of three clerks. The 2017-19 budget provides for 108.5 FTEs, which is a shortage of 21.01 clerks. After the budget reductions, the largest shortage will be in Cass County with 4.24 clerks and the largest shortage by percentage will be in Morton County with a shortage of 38%.

The county-operated clerk offices show a need of 30.04, which is a decrease of 2.25 from the last study. The following 10 counties have an FTE need of greater than one and have the option to become state-employed clerk offices: Benson, Bottineau, Dunn, McHenry, McLean, Mercer,

Mountrail, Pembina, Pierce, and Traill Counties. In response to a question asking if any of the 10 counties are looking at becoming state funded, Ms. Holewa indicated she is not aware of any at this time.

Policy 507-Case Management Review

Judge Schmidt said that at the last Administrative Council meeting, changes were made to the proposed amendment to the Case Management Review. Those changes and the feedback received at the meeting have been incorporated into the current version. She said the changes include: (1) only the judicial officers that are not in compliance with the 90-day requirement will be required to report monthly to the chief justice; and (2) the time frame for presiding judges to review the docket currency report was changed from 10 to 15 days.

Chief Justice VandeWalle questioned if there was some inconsistency between 1.b. and 2a. Section 1.b. states a judicial officer shall report monthly to the chief justice and section 2.a. states that on a quarter basis each judge shall review pending matters and identify the judge's cases.

Judge Schmidt responded that section 1.b refers to cases under advisement and section 2.a. concerns docket currency review of all cases that are pending. In an attempt to make it more clear, she suggested subsection 2 could be titled docket currency review.

Judge Fontaine questioned the need for the policy in addition to AR 12, which is the administrative rule that already sets out the time standards. Judge Schmidt responded since the implementation of Odyssey, the docket currency standards have not been reviewed. In an attempt to more efficiently use docket currency review, some proposed changes have been made to AR 12. Part of those changes is to remove the language from AR 12 that refers to the reporting process and docket currency and put it into a policy (507). She said one of the reasons for moving the language to the policy is because it is easier to amend a policy than it is a rule.

In response to a question asking if there is an identified problem with docket currency in the state, Chief Justice VandeWalle responded there is and as usual rules are made for the exception rather than the rule. By and large, he said the judges do a good job on docket currency standards, however there are some problems across the state.

Judge Hagerty indicated one of her concerns is even if a report is not made every month, you still have to go through the process of the review, which is adding an additional monthly responsibility. She then said in looking at sections 1.a. and 1.b. together, not later than 5 business days before the 90-day period expires, the judicial officer needs to make a request to the presiding judge. If they show good cause, then the presiding judge can grant an additional 90 days, but it still has to be reported to the chief justice even if the presiding judge has given them the additional 90 days. She said it seems unnecessarily burdensome and not really designed to be very helpful.

Judge Schmidt stated it might be beneficial to revise 1.b. to read that if the presiding judge grants

an additional 90-day extension, that does not need to be reported to the chief, and only if the judicial officer does not have it done in a total of 180 days or within the extended time frame, then it will be reported to the chief with a note that the presiding judge had approved this previously.

Chief Justice VandeWalle and Judge Hagerty agreed that the above language was an improvement, but that is not how the current proposed changes read.

Judge Hagerty noted the current proposed language states in all cases the presiding judge will be able to have reviewed the case and make a decision in 5 days whether there should be an extension. She is concerned that the expectation is unrealistic.

Judge Schmidt said the proposal is meant to make people more accountable and encourage things to get done. She suggested maybe 10 days would be more appropriate.

Chief Justice VandeWalle stated the presiding judge and the court administrator should be setting up some kind of protocol with judges in the district so that the presiding judge is alerted if the judicial officer is not able to finish a case.

Ms. Holewa indicated that 15 to 20 days may be a more reasonable time frame as it forces the judicial officer to decide whether they are going to get it done or whether they need to talk to their presiding judge. She said the current policy requires different reports to be run every month for docket currency. Under the new proposal, it would eliminate a lot of that monthly reporting that is being or should be getting done under the current policy.

Judge Racek suggested instead of relying on the judicial officer to report the problem to the presiding judge, a report could be run by court administration and submitted to the presiding judge when it is past a certain time frame.

In response to a question asking if the reports would need to be run every day based on the 90-day deadline, Judge Schmidt responded no. Judge Racek added that the court administrator should be able to write a report so that any time a certain threshold is hit, you get notice of it. He suggested the reports be provided to the presiding judge as well as the judicial officer in question.

Judge Cresap indicated he is sitting in for Judge Lee. He said as was stated at the last meeting, Judge Lee thought this was a lot of administrative work to fix an isolated problem. Judge Cresap stated when an issue is disclosed under the current system, nothing is done to fix the problem.

Chief Justice VandeWalle noted under the current rule, the chief justice gets a report quarterly which may be long after the docket current standards have been violated and the action is then reported to the Judicial Conduct Commission. Under the proposed rule, the chief will get a report monthly which means it is going to be more prompt.

Judge Narum stated he agrees with Judge Racek that the problem should be addressed before the 90-day period. He suggested at 60 days, or another agreed-upon time frame, an automatic report could be sent to the judicial officer in violation. That gives the presiding judge an opportunity to solve the problem with the judicial officer before it becomes a violation of the rule.

Ms. Holewa suggested the time frame be 75 days, as the judicial officer may not feel a sense of urgency at 60 days.

It was moved by Judge Schmidt, seconded by Justice Kapsner to forwarded the proposed changes to the court as amended.

After brief discussion, **with the consent of the second, the motion was amended to as follows: in paragraph 2, after the word “designee”, the phrase “and presiding judge” be added; in paragraph 2, a sentence be added at the end stating, “Each judicial district will establish a process to comply with this policy.”; in paragraph 1.b. the follow will be added to the end of the first sentence: “unless an extension has been granted.”**

Judge Mattson questioned if each judicial district would be required to set up their own procedure to implement the policy to avoid a rolling 90 days. Judge Schmidt stated the intent of the motion was to make it a unit decision.

A roll call vote was taken and **the motion carried with nine people voting in favor of the motion and five people voting against it. The policy will be sent out for comment.** Chief Justice VandeWalle encouraged those who were opposed to the motion to submit alternative language.

Policy 602-Professional Development and Education Policy for District Court Judges

Sally Holewa said she put the policy on the agenda after some discussion with the Judicial Education Commission. As of right now, the policy for out-of-state education is strictly based on budget and if it is not budgeted, approval is needed. With the need to get CLEs and travel restricted because of the budget, it was suggested that the presiding judge or someone may want to be involved in the approval process. Some of the things that could be considered are 1) whether the person is in need of CLEs; 2) whether or not the person is current with their docket; and 3) any other issues the presiding judge may want to consider before approving out-of-state travel. Each district is budgeted for three out-of-state trips for all judges in their district. Under the current policy that means the first three judges in the district to sign up for something get to go. Another issue brought to her attention is that online learning typically occurs during the day, and she questioned whether presiding judges may want input on whether or not court calendars can be adjusted.

Judge Hagerty suggested referring the policy to the Judicial Branch Education Commission to develop some criteria such as distributing the opportunities around the state; what other educational opportunities the judge has taken advantage, both in-state and out of state; whether or

not the judge is current on their docket, etc.

It was moved by Judge Hagerty, seconded by Judge Narum, to refer Policy 602 to the Judicial Branch Education Commission to develop some criteria. The motion carried.

Legislative Session Update

An update on the status of the bills before the Legislature was provided to the Council by Sally Holewa and Lindsey Nieuwsma.

The meeting adjourned.